

Memorandum

To: Honorable Betty T. Yee, Interim Chairwoman
Honorable Bill Leonard, Interim Vice-Chair
Honorable Michelle Steel, Third District
Honorable Judy Chu, Ph.D., Fourth District
Honorable John Chiang, Controller

Date: **January 26, 2007**

From: David J. Gau 
Deputy Director, Property and Special Taxes Department

Kristine Cazadd 
Chief Counsel

Subject: **Board Meeting – February 1, 2007**
Chief Counsel Matters – Item J1
Property Tax Appeals – Status Report on Pre-Hearing Appeals Conferences for State Assesseees

2006 STATE ASSESSEE APPEALS CONFERENCE PROCESS

Status

At the May 17, 2006 meeting, the Board approved appeals conference guidelines (*Guidelines*) recommended by staff for mandatory appeals conferences on all property tax petitions that requested an oral hearing or appeals conference.¹ The staff implemented the *Guidelines* this year commencing with petitions for reassessment of 2006 state-assessed unitary property values (state assessee appeals). This memorandum presents background and recommendations in response to the accompanying Status Report on the feedback received from petitioners and Board staff on the implementation of the conference process for 2006 state assessee appeals. As stated in the *Guidelines*, the objective was implementation of the appeals conference process in 2006, to enable the Board and its staff to further refine procedures and practices to ensure that they are properly integrated into the Board's overall appeals process prior to promulgating formal regulations.

Summary of Recommendation and Request for Direction

Consistent with the Board's objective, staff will recommend that certain improvements be made, most importantly that appeals conferences for state assesseees be discretionary rather than mandatory.

¹ *Guidelines for Property Tax Appeals Division Review and Appeals Conference Process*, June 5, 2006, were distributed to all state assesseees and posted on the Board's website. A copy of the *Guidelines* is attached to the status report.

Background

The Appeals Division of the Board's Legal Department provides independent, neutral review of protested matters. This review may be accomplished based on the written submissions of the parties, or with the assistance of an appeals conference, in which the petitioner and the Board staff meet with an Appeals Division attorney (conference holder).

An appeals conference is one tool that, for certain petitions, can assist the petitioners and Board staff in independently developing the factual record, and narrowing and resolving the issues raised in the petition to the greatest extent possible prior to the Board's decision on the petition. In 2006, the state assessee appeals conference holder, after reviewing all the evidence and arguments, prepared a neutral, objective hearing summary for oral hearings. If the petitioner did not request an oral hearing, the conference holder prepared a summary and recommendation, which was submitted for consideration and adoption by the Board. The summary and recommendation summarizes the appeals conference proceedings (if one has been held) and sets forth the issues, factual background, contentions of the parties, a legal analysis of the issues, generally including suggested questions to be posed to the parties at the oral hearing, and where oral hearing has been waived by the taxpayer, a recommended resolution of the issues presented.

Staff Recommendation and Request for Direction

The attached Status Report reveals a general consensus that the Appeals Division's review of some state assessee petitions scheduled for oral hearing could be improved by eliminating the conference requirement in appeals that (1) do not involve complex facts (2) do not require clarification of issues or legal argument, and (3) do not appear to be amenable to staff-level resolution. Therefore, staff recommends that appeals conferences should be discretionary, and presents the following implementation alternatives for the Board's consideration and direction:

Alternative 1 (Staff Recommendation): Appeals conferences for state assessees should be held at the request of either party (i.e., the petitioner or the State-Assessed Properties Division), the Appeals Division, or at the request of any Board Member, when such a conference would be likely to assist the Appeals Division's development of the factual record or analysis of the issues presented.

Alternative 1 would allow a petitioner or the State-Assessed Properties Division staff to determine the necessity of an appeals conference.

Alternative 2: Appeals conferences for state assessees should be held when, in the opinion of the Appeals Division, or at the request of any Board Member, such a conference would be likely to assist the Appeals Division's development of the factual record or analysis of the issues presented.

Alternative 2 should result in the most efficient use of resources for the Appeals Division, taxpayers, and the State-Assessed Properties Division since conferences would only be held in appeals involving complex issues, where clarification is needed, or where staff-level resolution seems possible. However, it would not allow a petitioner to request an appeals conference.

With either Alternative, staff requests direction from the Board to allow the State-Assessed Properties Division's appraisers to submit their analyses and recommendations directly to the Appeals Division. This will reduce compaction by eliminating one level of the Legal

Department's formal review process and provide more time for the Appeals Division to complete its analysis of the issues. The Tax and Fee Programs Division's attorneys, however, will continue to advise the State-Assessed Property Division on appeals, both before and after the conference. Appeals Division attorneys would then analyze each petition and State-Assessed Property Division's Analysis. If a conference is held, the participants would be the petitioner and State-Assessed Properties Division staff. If a disputed issue could not be resolved without a Board hearing, Tax and Fee Programs Division staff attorneys would then represent the State-Assessed Properties Division at the oral hearing.

After receiving direction from the Board, staff will incorporate the relevant provisions into the next draft of Chapter 3, Property Taxes, of the *Rules for Tax Appeals* and circulate them for public comment prior to staff's presentation of Chapter 3 to the Board for approval at the March 20-21, 2007 meeting.

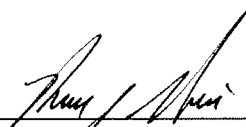
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Attachment

Assessee Appeals status Rpt.06 Cover Memo.doc

cc: Mr. Ramon J. Hirsig MIC:73
Mr. Todd Gilman MIC:70

Approved:



Ramon J. Hirsig
Executive Director

bc: Mr. Alan LoFaso MIC:71
Mr. Mark Ibele MIC:71
Ms. Barbara Alby MIC:78
Mr. Erik Caldwell MIC:77
Mr. Steve Shea MIC:72
Ms. Marcy Jo Mandel (Controller's Office)
Mr. Stanley Siu MIC:61
Mr. Jefferson Vest MIC:85
Mr. Robert Lambert MIC:82
Mr. Gary Evans MIC:80
Ms. Carole Ruwart MIC:82
Ms. Bradley Heller MIC:82



BOARD OF EQUALIZATION
STATUS REPORT

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- ☐ Business Taxes Committee
- ☐ Customer Services and Administrative Efficiency Committee
- ☐ Legislative Committee
- ☐ Property Tax Committee
- ☒ Other [Chief Counsel Matters]

Topic:

Survey Results of the 2006 State Assessee Petition (Appeals) Process

Background:

On May 17, 2006, the Board approved guidelines (see Attachment A) which implemented procedures for processing property tax petitions including those filed for reassessment of 2006 state-assessed unitary property values. The most significant change from the prior process was the implementation of mandatory appeals conferences for petitioners when an oral hearing or appeals conference was requested at the time the appeal was filed. The new procedures were fully implemented for the 2006 state assessee appeals process.

As a result of discussions at the November 21, 2006 Board meeting, the Board directed that a survey be conducted to determine how the 2006 state assessee appeals process functioned under the new procedures, and that the results of the survey be presented at the January 2007 Board meeting.

Current Status:

Staff of the Property and Special Taxes Department, County-Assessed Properties Division,¹ developed two survey questionnaires—one to solicit information from the tax representatives who filed petitions in 2006 on behalf of state assessees, and one to solicit information from Board staff who participated in the various stages of the appeals process. Additionally, some interviews were conducted to obtain input.

Following the conclusion of the 2006 appeals process, the survey questionnaires were e-mailed to participants on December 19, 2006. The Appeals Division staff has noted that, in some cases, appeals conferences were beneficial in developing the factual record, clarifying legal arguments, and narrowing and resolving disputed issues. However, the survey responses indicated that, overall, the 2006 appeals process was more inefficient than the prior year because appeals conferences were mandatory, rather than discretionary, even for those cases where further factual development and/or narrowing of the issues were not necessary.

For 2006, there were a total of 54 petitions filed by state assessees and 34 of the petitions either requested an oral hearing or appeals conference. The survey results indicated that some of these petitioners would not have requested an oral hearing under the former procedures, but elected to do so in 2006 to participate in the appeals conference process under the new procedures.

¹ Formerly the Assessment Policy and Standards Division.

Ultimately, only eleven petitions went before the Board for an oral hearing. The statistics are consistent with prior years and indicate that the oral appearance waivers and petition withdrawals would most likely have occurred with or without the appeals conference process. The following table shows the state-assessee appeals activity for the years 2004 through 2006:

| State-Assessee Appeals | | | |
|-------------------------------|----------------------------|--|--|
| <i>Appeals Year</i> | <i>Total Appeals Filed</i> | <i>Appeals Actually Heard by Board</i> | <i>Percent Actually Heard by Board</i> |
| 2006 | 54 | 11 | 20% |
| 2005 | 45 | 9 | 20% |
| 2004 | 55 | 4 | 7% |

Survey participants were asked:

Do you believe that the formal appeals conference process should be continued and adopted as part of the *Board of Equalization Rules for Tax Appeals* for state assessees?

Responses by petitioners: 9 yes (representing 39% of petitions filed)
5 no (representing 34% of petitions filed)

Responses by Board staff: 9 yes
11 no

Many of those who responded "yes," qualified the response by indicating that they believed the appeals conference process should be continued, but that it should be discretionary rather than mandatory.

Conclusion:

The results of the survey indicated that, while having some merit, the 2006 appeals process could be improved by eliminating the conference requirement in appeals that (1) do not involve complex facts (2) do not require clarification of issues or legal argument or (3) do not appear to be amenable to staff-level resolution. The survey results offer four primary issues that should be considered during the 2007 process:

1. Revise the existing procedures to make the appeals conferences discretionary rather than mandatory. Appeals conferences could be held as needed or requested by the parties with the likelihood of narrowing down the issues or resolving all issues.
2. The State-Assessed Property Division should submit their analyses and recommendations directly to the Appeals Division thereby giving the Appeals Division the primary role in reviewing and analyzing the State-Assessed Property Division's analyses and recommendations. This will reduce compaction by eliminating one level of the Legal Department's formal review process and provide the Appeals Division more time to complete its analysis of the issues. Tax and Fee Programs Division's attorneys will continue to advise the State-Assessed Property Division and represent their staff at oral hearings and on resolved nonappearance matters.
3. Give consideration to the state assessee appeals process when scheduling the October, November, and December Board meetings.
4. Require another review of the process following the 2007 appeals process to re-evaluate and

perfect procedures.

Prepared by: Property and Special Taxes Department, County-Assessed Properties Division

Current as of: January 23, 2007



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 Executive Director

June 5, 2006

TO: STATE ASSESSEES AND
 OTHER INTERESTED PARTIES

Re: Guidelines for Property Tax Appeals Division Review and Appeals Conference Process

This letter updates and supersedes the letter dated June 17, 2005, informing you that the Appeals Division of the Legal Department had assumed the function of reviewing property tax petitions, party briefs and evidence and preparing hearing summaries and summary decisions for the Board's consideration. On May 17, 2006, the Board approved the following guidelines, which will be implemented this year commencing with petitions for reassessment of 2006 state-assessed unitary property values and all other property tax petitions filed on or after July 20, 2006. The most significant change from the existing process is that Appeals Conferences will be held for certain state assessee and private railroad car petitions, and for all other property tax appeals, as described more fully below. The purpose of Appeals Conferences is to enhance the independent review function of the Appeals Division by enabling conference holders to independently develop the factual record, and to narrow and resolve issues raised in the petition to the greatest extent possible prior to the Board's decision on the petition. Implementing the conference process this year will enable the Board and staff to further refine the procedures and practices to ensure that they are properly integrated into the overall property tax appeal process prior to the promulgation of procedural regulations. The regulations authorizing the Appeals Division review process will be formally proposed for the Board's approval as part of Chapter 3 of the Rules for California Tax Administration and Appellate Review.

I. Procedures for All Property Tax Petitions

A. Discussions with Board Staff

For all property tax petitions, the Board's Property and Special Taxes Department staff (i.e., Valuation, Assessment Policy and Standards, and County Property Tax Divisions) will continue the established practice of conducting pre-hearing meetings and making informal contact with petitioners' representatives to request information and resolve issues in the course of the appeals process.

B. Hearing Summary or Summary Decision

The Appeals Division will prepare a "Hearing Summary" (for oral hearings) or a "Summary Decision" (for non-appearance matters) for each petition presented for the Board's consideration. Both a Hearing Summary and a Summary Decision set forth an objective statement of facts and a neutral analysis of the legal and valuation issues to assist the Board in taking action on the petition. If the Appeals Division determines that the Hearing Summary requires any corrections or changes based on subsequently obtained information, the Appeals Division will prepare a "Revised Hearing Summary."

II. Appeals Conference Procedures

A. State Assessee and Private Railroad Car Petitions - An Appeals Conference will be held in the following circumstances:

- For each petition that requests an oral hearing;
- For each petition that requests an Appeals Conference, but not an oral hearing;
- At a Board Member's request for petitions that do not request an oral hearing or Appeals Conference.

B. State Assessee and Private Railroad Car Petitions – Preparation of Hearing Summary or Summary Decision

A Hearing Summary or Summary Decision will be prepared for each petition presented for the Board's consideration, as follows:

1. Appeals Conference Held (Oral Hearing and Nonappearance). The Appeals Division will prepare the Hearing Summary or Summary Decision. (See sections III.D and IV.A below.)
2. No Appeals Conference (All Issues Resolved). When an Appeals Conference is not held and all issues are resolved, the Tax and Fee Program Division of the Board's Legal Department will prepare the Summary Decision for the Board's consideration on the Property Tax Matters Nonappearance calendar. (See section IV.B below.)
3. No Appeals Conference (Unresolved Issues). When an Appeals Conference is not held and one or more issues are unresolved, the Appeals Division will review the petition, the Valuation Division Summary, and the petitioner's optional response prior to preparing the Summary Decision for the Board's consideration on the Legal Appeals Matters Nonappearance calendar. (See section IV.C below.)

C. All Other Property Tax Petitions

For all other property tax petitions (i.e., welfare exemption and Property Tax Sampling Program petitions and Section 11 applications), the Appeals Division review will include an Appeals Conference, regardless of whether the petition will be decided by the Board at an oral hearing or as a written-only, nonappearance item. A Hearing Summary (for oral hearings) or a Summary Decision (for nonappearance matters) will be prepared by the Appeals Division.

III. Appeals Conference Process for State Assessee and Private Railroad Car Company Petitions

A. Scheduling

Petitioners are required to request an oral hearing or Appeals Conference at the time the petition is filed. If an oral hearing or Appeals Conference is requested, an Appeals Conference is mandatory. This means that the Appeals Conference will be held whether or not the petitioner attends, unless the petitioner waives its request for an oral hearing or its request for an Appeals Conference prior to the date of the Appeals Conference. A petitioner that requested an oral hearing may waive its oral hearing without waiving its Appeals Conference, and, even if a petitioner waives its right to an oral hearing and its Appeals Conference, an Appeals Conference will still be held if requested by a Board Member. The petition for reassessment form has been modified by adding a space for the petitioner to request an Appeals Conference if an oral hearing is not requested.

The Board Proceedings Division will schedule an Appeals Conference no less than 30 days before the oral hearing on the petition. Due to the fact that the Board must hear and decide all petitions for reassessment by the end of the calendar year, the Board Proceedings Division has a narrow window of time within which to schedule all Appeals Conferences. For that reason, the Board Proceedings Division will schedule all 2006 oral hearings and all nonappearance matters for which an Appeals Conference is held for the November and December 2006 Board meetings. It is anticipated that the Appeals Conferences for the November oral hearings will be scheduled on or about the week of October 16 through 20, 2006, and the Appeals Conferences for the December oral hearings will be scheduled on or about the week of November 6 through 10, 2006.

The Board Proceedings Division will notify the petitioner, the Valuation Division, and the Tax and Fee Programs Division of the date, time and place of the Appeals Conference by mail, electronic mail or facsimile. The parties will be asked to confirm their attendance at the Appeals Conference. The Board Proceedings Division will attempt to accommodate a request for rescheduling. Once a party has confirmed its attendance at the Appeals Conference, however, the Appeals Division will hold the Appeals Conference even if that party does not appear.

The typical Appeals Conference will be allotted one hour, while Appeals Conferences for petitions involving more complex issues will be allotted 90 minutes or more. Petitions for related companies involving the same issues may be consolidated for one Appeals Conference and, if the petitions are consolidated, the time allotment for the Appeals conference will be adjusted, if necessary.

B. Conference Briefing Process

The petition shall constitute the petitioner's opening brief. The Valuation Division will prepare and submit the "Valuation Division Summary" to the Board Proceedings Division, which will transmit a copy to the petitioner, no less than 30 days prior to the scheduled date of the Appeals Conference. The petitioner may file an optional response within 15 days after the Board Proceedings Division mails the Valuation Division Summary to the petitioner. The Appeals Division may also request additional information or briefing from the parties before, during, or after the Appeals Conference. If additional information or briefing is orally requested at the Appeals Conference, the conference holder will confirm the request in writing no later than two business days after the Appeals Conference. Unless otherwise permitted by the Appeals Division, all additional information and briefing requested at the Appeals Conference must be submitted no later than seven days after the Appeals Conference was held. Requests for modifications of the briefing schedule (including extensions) should be directed to the Board Proceedings Division.

C. Conduct of the Appeals Conference

To open the conference, the conference holder will state the name of the case, the matters that are at issue, and briefly explain the Appeals Conference process. While the Appeals Conference will be held in an informal manner that encourages the free exchange of information and opinions, as a general rule the petitioner will be allowed to make a brief opening statement and to make the first presentation. The Valuation Division will then have an opportunity to respond to each issue raised by petitioner. The conference holder will have broad discretion to control the scope of the presentations and to ask questions at any point in the presentations in order to develop as complete a factual record as possible, narrow the issues in dispute, and facilitate the resolution of as many issues as possible.

The petitioner will be represented at the Appeals Conference by an agent or employee who is thoroughly familiar with the facts and issues and has been authorized to represent the petitioner. The Valuation Division will be represented by an appraiser and a Tax and Fee Program Division attorney. If a petitioner's representative is not able to appear in person, the representative may request a conference by telephone or, if facilities are available, by videoconference. If a petitioner waives its appearance or if its agent fails to appear for an Appeals Conference, the Appeals Conference will be held with only the representatives for the Valuation Division. Petitioners are advised that a party's nonappearance will be reflected in the conference holder's Hearing Summary or Summary Decision, discussed below.

The conference holder will not make an audio, video, or stenographic recording of the Appeals Conference proceedings. Any party may arrange for a recording, at that party's expense. If such a recording is made, a copy of the recording or transcript shall be made available to the conference holder and the other party. Such recording or transcript shall become a public record when made, and shall be subject to disclosure to the public at the conclusion of the petitioner's oral hearing, if one is held.

D. Appeals Hearing Summaries for Oral Hearings

The conference holder will prepare a Hearing Summary for each Appeals Conference held for a petition that has requested an oral hearing, similar to the hearing summaries prepared by the Appeals Division for last year's oral hearings. The Hearing Summary will objectively summarize the Appeals Conference proceedings, state the issues presented, including those that have been narrowed and resolved, and establish a factual record either through stipulation or independent recommendations of findings based on the evidence. The Hearing Summary will also present a neutral analysis of the legal and valuation issues and provide the Appeals Division's comments to assist the Board at the oral hearing. The Hearing Summary will be submitted to the Board Proceedings Division no less than 10 days before the oral hearing and the Board Proceedings Division will distribute copies to the Board Members and to the parties. If the Hearing Summary requires correction or clarification, the Appeals Division will prepare and submit a Revised Hearing Summary to the Board Proceedings Division prior to the oral hearing. If the Appeals Division does not determine that a correction or clarification is required prior to the day of the oral hearing, the Appeals Division shall orally inform the Board and the parties about the correction or clarification at the beginning of the oral hearing.

IV. Nonappearance Matters

A. Appeals Conference Held - Appeals Division Summary Decision

After each Appeals Conference held for a petition that did not request an oral hearing, the Appeals Division will prepare a Summary Decision entitled "Appeals Division's Summary and Recommendation for Property Tax Petition on Legal Appeals Matters Calendar." The Summary Decision will be submitted for consideration and adoption by the Board Members, similar to the summary decisions issued for appeals from the Franchise Tax Board. The Summary Decision will objectively summarize the Appeals Conference proceedings, set forth the issues, the factual background, the contentions of the petitioner and the Valuation Division, the applicable law and an analysis of the issues, and the Appeals Division's recommended resolution of the issues presented. The Summary Decision will be submitted to the Board Proceedings Division no later than ten days prior to the meeting at which the petition is scheduled for Board action. The Board Proceedings Division will distribute copies to the Board Members and to the parties. If the Summary Decision requires correction or clarification, the Appeals Division will prepare and submit a Revised Summary Decision to the Board Proceedings Division prior to the meeting at which the petition is scheduled for decision by the Board.

B. No Appeals Conference – Agreement on all Issues - Property Tax Matters
Nonappearance Calendar

If the petitioner has not requested an oral hearing or an Appeals Conference, or has waived its oral hearing and Appeals Conference, and the parties agree on a joint recommendation to the Board on all the issues raised in the petition, the Tax and Fee Program Division will submit a Summary Decision entitled "Valuation Division's Recommendation on Property Tax Petition on the Property Tax Matters Nonappearance Calendar" to the Chief of Board Proceedings, setting forth an analysis of the petition, the related supporting documents, and a staff recommendation for Board action. Under these circumstances, the "Valuation Division's Recommendation on Property Tax Petition on the Property Tax Matters Nonappearance Calendar" constitutes the only staff recommendation to the Board for its decision on the petition and will be distributed by the Board Proceedings Division to the Board Members and the petitioner no later than ten days prior to the meeting at which the petition is scheduled for Board action.

C. No Appeals Conference - Unresolved Issues - Legal Appeals Matters Nonappearance
Calendar

If the petitioner has not requested an oral hearing or an Appeals Conference, or has waived its oral hearing and Appeals Conference, and the parties do not reach an agreement for a joint recommendation to the Board, the Valuation Division will submit a "Valuation Division Summary," setting forth an analysis of the petition, the related supporting documents, and a staff recommendation for Board action.² The petitioner may file an optional response within 15 days after the Board Proceedings Division mails the Valuation Division Summary to the petitioner. The Board Proceedings Division will distribute a copy of the Valuation Division Summary and petitioner's optional response to the petitioner, the Appeals Division, the Board Members, the Valuation Division and the Tax and Fee Program Division. Once the briefing process is completed, the Appeals Division will review the petition, Valuation Division Summary, and petitioner's response, if any, and prepare a Summary Decision, as described above, entitled the "Appeals Division's Summary and Recommendation for Property Tax Petition on Legal Appeals Matters Calendar." The Summary Decision will be objective and set forth the issues, the factual background, the contentions of the petitioner and the Valuation Division, the applicable law and an analysis, and the Appeals Division's recommended resolution of the issues presented. The Appeals Division will submit the Summary Decision to the Board Proceedings Division no later than ten days prior to the meeting at which the petition is scheduled for Board action. The Board Proceedings Division will distribute a copy of the Summary Decision to the petitioner, the Board Members, the Valuation Division, and the Tax and Fee Programs Division.

² "Valuation Division Summary" was previously entitled "Staff Recommendation on Property Tax Petition on the Nonappearance Calendar."

If you have any questions, please contact Tax Counsel IV Louis Ambrose at (916) 445-5580.

Sincerely,

/s/ Gary Evans

Gary Evans, Acting Chief
Board Proceedings Division